

**Before the**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Subscriber Carrier	)	
Selection Changes Provisions of the	)	
Telecommunications Act of 1996	)	CC Docket No. 94-129
	)	
Policies and Rules Concerning	)	
Unauthorized Changes of Consumers	)	
Long Distance Carriers	)	

**AT&T PETITION FOR PARTIAL RECONSIDERATION  
OR, IN THE ALTERNATIVE, REQUEST FOR CLARIFICATION**

Pursuant to Section 1.429 of the Commission's Rules, 47 C.F.R. §1.429, AT&T Corp. ("AT&T"), requests that the Commission reconsider, or in the alternative clarify, certain portions of its *Third Reconsideration Order* in this docket regarding unauthorized changes in subscribers' selections of a preferred carrier, commonly referred to as "slamming."<sup>1</sup> As shown below, in several respects the Commission's decision is likely to have clearly unintended consequences that will not increase consumer protection but which, absent reconsideration or clarification, will needlessly impose significant

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<sup>1</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, released March 17, 2003 ("*Third Order on Reconsideration*"). A summary of the *Third Order on Reconsideration* was published in the Federal Register on April 18, 2003. See 68 Fed. Reg. 19176, *correction* 68 Fed. Reg. 25313 (May 12, 2003).

burdens and inconvenience upon both consumers and carriers providing service to those subscribers.

## ARGUMENT

### **The Commission Should Reconsider or Clarify Its Apparent Holding That Imposes New Obligations On Local Exchange Carriers To Verify Carrier Change Orders**

In the *Second Report and Order*<sup>2</sup> in this proceeding, the Commission determined that consumers who initiate calls to interexchange carriers (“IXCs”) should be afforded the same protection under the verification rules as those consumers who are contacted by such carriers, and therefore concluded that the third party verification (“TPV”) process should apply to in-bound as well as out-bound calls. In so ruling, however, the Commission distinguished between those in-bound calls and situations in which a customer initiates or changes intraLATA or interLATA toll service by directly contacting a local exchange carrier (“LEC”).<sup>3</sup> In those cases, the Commission stated that:

“the customer’s choice would not need to be verified by either the LEC or the chosen IXC. In this situation neither the LEC nor the IXC is the submitting carrier as we have defined it. *The LEC is not providing interexchange service to that subscriber.* The IXC has not made any requests -- it has merely been chosen by the consumer. Furthermore, because the subscriber has personally requested the change from the executing carrier, the IXC is not requesting a change on the subscriber’s behalf. If a LEC’s action in this situation resulted in the subscriber being assigned to a

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<sup>2</sup> *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers’ Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-334, released December 23, 1998 (“*Second Report and Order*”), reported at 14 FCC Rcd.1508.

<sup>3</sup> *Id.* at 1548-9.

different interexchange carrier than the one originally chosen by the subscriber, however, then that LEC would be liable for violations of its duties as an executing carrier”<sup>4</sup>

The *Third Reconsideration Order* has now modified the LEC’s obligation to verify in-bound calls. The Commission reasoned that:

“due to the changes in the competitive landscape that have come to fruition, since the adoption of the *Second Report and Order*, and based on our experiences therewith, we now find it necessary, as with other in-bound carrier change calls, to require verification of carrier change requests that occur when a customer initiates a call to a LEC.”<sup>5</sup>

It is unclear, however, from the foregoing statement in the *Third Reconsideration Order* whether the Commission intended a LEC to verify *all* in-bound calls, regardless of the identity of the selected carrier, or whether the Commission was requiring a LEC to verify only those calls requesting a carrier selection change to its own long distance affiliate.

Clearly, there are sound public policy reasons for requiring LECs to adhere to the Commission’s verification rules when a consumer contacts a LEC that also offers long distance services through its affiliate. The need to protect consumers is apparent where there is the possibility of self-dealing on the part of the LEC responsible for making a carrier selection change to favor its own affiliated long distance carrier. In these situations, AT&T agrees with the Commission that “LECs that compete with other carriers for local and long distance services may not be neutral third parties in implementing carrier changes.”<sup>6</sup> Reflecting its own recognition of the Commission’s

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<sup>4</sup> *Second Report and Order*, ¶ 93 (emphasis supplied).

<sup>5</sup> *Third Reconsideration Order*, ¶ 91.

<sup>6</sup> *Second Report and Order*, ¶ 12; *Third Reconsideration Order*, ¶ 91.

stated concerns, AT&T, when it acts in its capacity as a LEC, already performs (and will continue to perform) verification of a consumer's carrier change requests for AT&T's own IntraLATA and InterLATA toll services.

On the other hand, the Commission's determination in its *Second Report and Order* that LECs are not required to verify all in-bound calls should continue to apply in situations where a subscriber is merely requesting that a LEC implement a carrier selection change to an IXC that is not affiliated with the LEC. In these markedly different situations, there is no apparent potential for bias on the LEC's part. AT&T therefore concurs with the view expressed by Verizon, BellSouth, SBC and Qwest in their May 2, 2003 joint *ex parte* submission that the Commission's policy concerns underlying Paragraph 91 of the *Third Reconsideration Order* are not present where the subscriber is making a carrier selection other than to the LEC's own long distance affiliate.<sup>7</sup>

Distinguishing the verification requirements in this manner is fully consistent with other prior pronouncements by the Commission. Specifically, the Commission has obligated a LEC, as the executing carrier, to implement a customer's carrier selection request that is submitted by an IXC without delay and without additional verification. The Commission recognized that otherwise executing local carriers would have the incentive and ability to use the verification process as a means of delaying or denying carrier change requests in order to benefit themselves or their affiliates.<sup>8</sup> Such

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<sup>7</sup> Joint *Ex Parte* submission of Verizon, BellSouth, SBC and Qwest in CC Docket 94-129, dated May 2, 2003.

<sup>8</sup> *Second Report and Order*, ¶ 98.

verification by an executing local carrier could act as a *de facto* preferred carrier freeze even in situations where a subscriber did not request such a freeze.<sup>9</sup> The *Third Reconsideration Order* (¶¶ 19-25) expressly affirmed the Commission’s prior holding in this respect.<sup>10</sup> *A fortiori*, verification is unwarranted where the selection of an unaffiliated IXC is submitted to the LEC directly by the subscriber through an in-bound call.

Requiring LECs to verify each and every carrier selection change for an in-bound call would also be seriously disruptive and overly burdensome to AT&T and similarly situated carriers. Such a significant change in the application of the Commission’s verification rules would require substantial modifications to AT&T’s processes and procedures in order to comply with the requirement to verify every in-bound caller’s change of their presubscribed carrier.

As shown in the attached Declaration of Rebecca Yung-Eng (“Yung-Eng Declaration”), verification of carrier selections through third party verification (“TPV”), while a local exchange company is in direct contact with the subscriber, will significantly increase the overall cost for the industry, which, in turn, may result in an increase in service fees for the customers. AT&T estimates an average CLEC will increase its verification transactions by eight percent, at an average cost of approximately \$1.50 per third party verification transaction in addition to initial development costs and annual

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<sup>9</sup> *Id.*, ¶¶ 99-101.

<sup>10</sup> The Commission reached this conclusion in part because of concerns that the verifications would be unduly burdensome and inconvenient for consumers. These same concerns militate strongly against imposing a verification requirement on the LEC as the executing carrier for a selection of an unaffiliated IXC that is submitted directly by the customer to the LEC.

recurring charges.<sup>11</sup> Such verification will also require extensive and costly changes by carriers in a variety of other processes required to properly serve customers.<sup>12</sup>

AT&T therefore requests that the Commission reconsider its ruling or in the alternative to clarify that the requirements of Paragraph 91 of the *Third Reconsideration Order* are limited to verifying changes made by LECs to their affiliated long distance carriers.<sup>13</sup>

**The Commission Should Reconsider or Clarify Its Verification Requirements for Residential Customer Moves Or Business Relocations Or Expansions**

AT&T also requests that the Commission reconsider or in the alternative clarify Paragraph 101 of its *Third Reconsideration Order*, which requires LECs as executing carriers to verify carrier selections at the same time a subscriber changes residences or when a business relocates or expands. Imposing that requirement in all such instances is internally inconsistent with other portions of the Commission's order, and would impose substantial and unwarranted compliance burdens on AT&T and other similarly situated carriers.

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<sup>11</sup> Yung-Eng Declaration, ¶ 3.

<sup>12</sup> *Id.*, ¶¶ 3-4. These include coordination of methods, procedures, training, script and/or systems changes in each functional area of a company ranging from customer care channels to billing and collection, sales, provisioning and exception processing to ensure that verification of a carrier selection request has been correctly processed and that the order has been provisioned. Carriers that utilize Letters of Agency ("LOAs") will also need to modify the existing content of those documents to be in compliance with the new verification rule.

<sup>13</sup> However, AT&T does not seek – and strenuously opposes – any modifications to the Commission conclusion in its *Third Reconsideration Order*, ¶¶ 86-88, that an IXC is not liable for any slamming claim based upon a LEC's failure to execute a customer's carrier selection charge and that the LEC bears exclusive responsibility for such claims (including, but not limited to, providing any appropriate adjustments or refunds to affected customers).

The *Third Reconsideration Order* (§ 100) reaffirmed the Commission's previous finding that its slamming rules do not apply to new installations because it reasoned that Section 258 of the Act refers specifically to carrier changes and should not be expanded to carrier selections where no change has occurred, i.e., new service. Notwithstanding that conclusion, however, Paragraph 101 of the *Third Reconsideration Order* appears to suggest that executing local carriers are obligated to perform verification in some new service installations:

“We emphasize, however, that the statu[t]e does encompass all *changes* in a subscriber's selection of a provider of telecommunications service, regardless of whether such change occurs at the same time a subscriber changes residences or when a business relocates or expands.”<sup>14</sup>

The Commission's foregoing statement fails to take into account that carriers such as AT&T are generally unable to determine in real time whether a customer has either changed residences or has relocated a business.<sup>15</sup> As explained in the Yung-Eng Declaration, the current industry LEC to LEC migration process does not provide an effective means for such carriers to determine if a subscriber is a "new" customer versus a "move" customer from another LEC/CLEC service area. The industry today maintains customer information in numerous databases of Customer Service Records (“CSRs”) that are separately maintained by each local exchange company. When a subscriber moves from one service area to another, and as a result subscribes to a new local exchange company's service, the new local exchange company generally has no real time access to

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<sup>14</sup> *Third Reconsideration Order*, § 101.

<sup>15</sup> The rationale for requiring verification in the case of a “business expansion” is also unclear. Where a business expands by adding presubscribed lines, for which there necessarily has been no carrier change, those installations are by definition “new lines” for which the *Third Reconsideration Order* reaffirmed verification is not required.

the CSR for the subscriber's prior LEC, and therefore cannot determine whether the subscriber's selections of an IntraLATA and/or InterLATA carrier represent a change from their former carrier designations.<sup>16</sup> The new local exchange company therefore usually has no option but to consider this subscriber a "new" customer that is making an initial selection of their IntraLATA and InterLATA carrier.<sup>17</sup>

Because neither AT&T nor any other similarly situated carrier can confirm if the customer who requests a new number may be a "new" or "move" customer, such carriers, under the reasoning of Paragraph 101, would be required to verify *all* in-bound service requests -- even if the selections being verified are for a new line. But this is precisely what the Commission reaffirmed in the *Third Reconsideration Order* is *not* required.<sup>18</sup> In effect, Paragraph 101 of the decision has created an exception that has eaten up the rule.

AT&T respectfully requests that the Commission reconsider or clarify this aspect of its order to confirm that any new installations, regardless of whether a subscriber changes residences or a business relocates or expands, are not subject to the Commission's verification rules.

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<sup>16</sup> Yung-Eng Declaration, ¶ 6. The only "move" order in which such a carrier change can be determined by a local exchange company is where a subscriber is changing address but maintaining the same telephone number. *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Third Reconsideration Order*, ¶ 100.



## **CONCLUSION**

For the foregoing reasons, the Commission should reconsider and modify, or in the alternative clarify, its *Third Reconsideration Order* as described above.

Respectfully submitted,

AT&T Corp.

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May 19, 2003

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**DECLARATION OF REBECCA YUNG-ENG**

Rebecca Yung-Eng, under penalty of perjury, hereby declares as follows:

1. I am currently employed as a Compliance Manager with the AT&T Consumer Services Division. A portion of my job duties consists of responsibility for ensuring marketing and provisioning changes in support of enacted slamming and telemarketing rules. I make this declaration in support of AT&T's Petition for Partial Reconsideration or in the Alternative Request for Clarification of the Commission's Third Order on Reconsideration and Second Further Notice of Proposed Rulemaking, FCC 03-42, released March 17, 2003 ("*Third Reconsideration Order*").

2. It is unclear whether Paragraph 91 of the *Third Reconsideration Order* requires a local exchange carrier ("LEC") to verify only those in-bound calls from customers requesting a carrier selection change to the LEC's own long distance affiliate, or whether the Commission intended a LEC to verify *all* carrier selections made by customers through in-bound calls, regardless of the identity of the selected carrier.

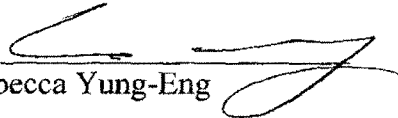
Verification of all such carrier selections through third party verification (“TPV”), while a local exchange company is in direct contact with the subscriber, will significantly increase the overall cost for the industry, which may result in an increase in service fees for customers.

3. AT&T estimates an average CLEC will increase its verification transactions by eight percent, at an average cost of approximately \$1.50 per third party verification transaction in addition to initial development costs and annual recurring charges. Companies that utilize Letters of Agency (“LOAs”) will also need to modify the existing content of those documents to be in compliance with the new verification rule.

4. Verification of carrier selections described in paragraph 3 above, will also require extensive and costly coordination of methods, procedures, training, script and/or systems changes in each functional area of a company ranging from customer care channels to billing and collection, sales, provisioning and exception processing. Each system and interface that interacts with the provisioning process must be changed in order to ensure the processing of the verification of another carrier's change request, as well as the backend provisioning validation that such verification has been completed.

5. Additionally, although the *Third Reconsideration Order* reaffirmed the Commission’s conclusion that its slamming rules do not apply to new installations, Paragraph 101 of that same order requires LECs as executing carriers to verify carrier selections at the same time a subscriber changes residences or when a business relocates or expands. Imposing that requirement would impose substantial and unwarranted compliance burdens on AT&T and other similarly situated carriers.

6. The current industry LEC to LEC migration process does not provide an effective means for such carriers to determine if a subscriber is a "new" customer versus a "move" customer from another LEC/CLEC service area. The industry today maintains customer information in numerous databases of Customer Service Records ("CSRs") that are separately maintained by each local exchange company. When a subscriber moves from one service area to another, and as a result subscribes to a new local exchange company's service, the new local exchange company generally has no real time access to the CSR for the subscriber's prior LEC, and therefore cannot determine whether the subscriber's selections of an IntraLATA and/or InterLATA carrier represent a change from their former carrier designations. (The only "move" order in which such a carrier change can be determined by a local exchange company is where a subscriber is changing address but maintaining the same telephone number.) The new local exchange company therefore usually has no option but to consider this subscriber a "new" customer who is making an initial selection of their IntraLATA and InterLATA carrier.

  
Rebecca Yung-Eng

Dated: May 19, 2003